

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
PECOS DIVISION

ENERGY VAULT, INC.,

Plaintiff/Counter-Defendant,

vs.

UNITED STANDARD ELECTRIC, LLC,

Defendant/Counter-Plaintiff.

§
§
§
§
§
§
§
§

Civil Action No. 4:23-cv-00047

**PLAINTIFF ENERGY VAULT, INC.’S ANSWER AND AFFIRMATIVE DEFENSES
TO DEFENDANT UNITED STANDARD ELECTRIC, LLC’S COUNTERCLAIM**

Plaintiff/Counter-Defendant, Energy Vault, Inc. (“Energy Vault”) files its Answer to Defendant/Counter-Plaintiff, United Standard Electric, LLC’s (“USE”) Counterclaim, and respectfully shows as follows:

COUNTERCLAIM

1. Energy Vault admits, on information and belief, that USE is an Oregon company and that its sole member is a citizen of Washington, otherwise denied.
2. Energy Vault admits that it is a Delaware corporation with an office at 4360 Park Terrace Drive, Suite 100, Westlake Village, CA 91361.
3. Paragraph 3 states a legal conclusion to which no response is required. Energy Vault admits that the amount in controversy exceeds \$75,000.
4. Paragraph 4 states a legal conclusion to which no response is required.
5. Energy Vault denies the allegations of paragraph 5.
6. Energy Vault admits that USE sold and delivered 40 transformers. Energy Vault denies the remaining allegations in paragraph 6.

7. Admitted that at least 2 of the transformers did not perform to specifications.
Energy Vault denies the allegations of paragraph 7.

8. Energy Vault denies the allegations of paragraph 8.

9. Energy Vault denies the allegations of paragraph 9.

10. Energy Vault denies the allegations of paragraph 10.

COUNTERCLAIM I: BREACH OF CONTRACT

11. Except as specifically admitted herein, Energy Vault denies the allegations of paragraph 11.

12. Energy Vault denies the allegations of paragraph 12.

13. Energy Vault denies the allegations of paragraph 13.

14. Paragraph 14 states a legal conclusion to which no response is required, otherwise denied.

JURY DEMAND

15. Energy Vault reiterates its demand for a trial by jury.

AFFIRMATIVE DEFENSES

16. **Prior Material Breach.** USE failed to provide Energy Vault with functioning transformers but instead provided transformers which were broken, damaged, defective, and not merchantable. USE thus committed the first material breach, which discharged and voided Energy Vault's remaining duties and obligations under the Purchase Order.

17. **Set off and Recoupment.** Energy Vault is entitled to set-off its damages from USE's breaches against the damages asserted by USE, and to recoup from USE the damages suffered by Energy Vault which exceed the damages asserted by USE.

18. **Failure to perform conditions precedent.** USE failed to provide Energy Vault with functioning transformers negating Energy Vault's obligations under the Purchase Order.

19. **Unclean Hands.** USE's claims are barred by its own unclean hands and inequitable conduct.

CONCLUSION AND PRAYER

Energy Vault denies that USE is entitled to any of the relief requested in its "Prayer for Relief." Energy Vault reiterates its prayer from its Complaint and further prays for this Court to:

- a. Dismiss USE's counterclaim with prejudice;
- b. Award costs to Energy Vault, including recovery of its attorneys' fees and related court costs;
- c. Grant all relief requested by Energy Vault in its Amended Complaint or any amendment thereof; and
- d. All such other and further relief to which Energy Vault may be entitled.

DATED: February 22, 2024

Respectfully submitted,

Ahmad, Zavitsanos & Mensing, PLLC

/s/ Todd Mensing

Todd Mensing, attorney-in-charge

Texas State Bar No. 24013156

Alexander M. Dvorscak

Texas State Bar No. 24120461

1221 McKinney Street, Suite 2500

Houston, Texas 77010

Telephone: (713) 655-1101

Facsimile: (713) 655-0062

tmensing@azalaw.com

advorscak@azalaw.com

**ATTORNEYS FOR PLAINTIFF
ENERGY VAULT, INC.**

CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2024, a copy of the foregoing was served electronically through the U.S. District Court, Western District of Texas ECF system to all counsel of record all of whom are Filing Users of the Court's Electronic Filing System.

/s/ Alexander M. Dvorscak

Alexander M. Dvorscak